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STATE OF NEVADA

DEPARTMENT OF TRANSPORTATION

1263 S. Stewart Street  
Carson City, Nevada 89712

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BOB MILLER, Governor

May 29, 1997

TOM STEPHENS, P.E., Director

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In Reply Refer to:

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street NW  
Washington, DC 20554

Re: CC Docket No. 92-297  
Second Report and Order  
Order on Reconsideration, and Fifth  
Notice of Proposed Rulemaking  
Adopted: March 11, 1997

Dear Mr. Secretary:

The Nevada Department of Transportation (NDOT) has reviewed the above-referenced proceeding and in particular, arguments for and against, continued usage of the radio spectrum at 31 GHz for vehicle traffic operations. Pleadings on behalf of NDOT<sup>1</sup> were noted and discussed in depth. The decisions made have seriously impacted the Department and certain other local government entities. Even though we feel that the Department should continue with an appeal process, we do not see where a formal appeal for reconsideration based on identical past arguments as provided in comments to the *Fourth NPRM*, will provide adequate justification to reverse the decision of CC Docket No. 92-297.

The problem is twofold. First, reliance upon consultants and manufacturers to advise the Department regarding the magnitude and importance of CC Docket No. 92-297 in lieu of direct involvement by NDOT, has resulted in stranded public investment<sup>2</sup> of installed 31 GHz equipment. Secondly, the completion of the Las Vegas Valley Traffic Operational System is now delayed for an indeterminate length of time because of the inability to access the 31 GHz spectrum. The objective and purpose of this letter is to explore an alternative method whereby NDOT would be allowed to place the already installed 31 GHz equipment into temporary operation for that period of time required for NDOT to locate and implement an alternative communication medium or technology.

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List A B C D E

<sup>1</sup> Reference to pleadings and comments to Fourth NPRM on behalf of NDOT and entities of North Las Vegas and City of Las Vegas at paragraphs 30, 57, 59, 78, 96, 99, 100, 101 and footnotes 43, 84, 139, 147.

<sup>2</sup> Present investment of equipment procured for which FCC authorization was pending is \$600,000. 75% of this equipment is already installed and operationally checked.

The Department's primary objectives are:

- A. To avoid or reduce stranded public investment; and
- B. To allow time (reference Attachment A for required tasks and time frames) to review, design, fund and implement an alternative communication method(s) or technologies as described by the Commission in paragraph 90 of Second R&O; and
- C. To allow the operational schedule for the Las Vegas Traffic Operational System to meet original time lines without further impact to the system or public safety.

We propose that the FCC allow the NDOT system to be placed into temporary operation with the following conditions while Objective B above is completed.

- 1. Authorize the system to operate on a secondary basis for an interim period until such time as actual deployment of LMDS systems and services in the Las Vegas area occur; and
- 2. Establish the understanding that this authorization does not give Nevada incumbent status; and
- 3. Establish the clear understanding that the State must cease and desist operations upon request from LMDS service provider if state's usage of the spectrum impacts deployment of LMDS systems; and
- 4. Upon agreement with the LMDS provider, should LMDS provider wish to accord access to spectrum as mentioned under paragraph 99 of Second Report and Order, adopted March 11, 1997, the State may extend its operations until such time as LMDS provider terminates the agreement.

The State and local entities have based this request on projected time frames to auction, plan and deploy LMDS technologies along with the probability to negotiate with the recipient of LMDS spectrum for extended operation if required.

The State assumes all of these risks knowing that no other alternative exists at this time to avoid stranded public investment of the facilities and system already installed.

If the Federal Communications Commission does look favorably to the Department's pleading, there is one issue that must be resolved and that may require the Commission to address during the reconsideration period for CC Docket 92-297. The issue is dismissal of NDOT's pending applications by the *Fourth NRPM*. In order for any further consideration to be given to NDOT, a method must exist by which NDOT applications can be accepted, reviewed, and, if the Commission is agreeable, be granted conditional authorization as requested in this

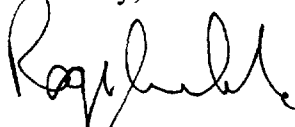
Secretary Caton  
May 29, 1997  
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letter. Review by NDOT presently shows no other method by which an application for a 31 GHz authorization can be accepted by the FCC, unless the issue of pending applications which were recommended to be dismissed in the *Fourth NRPM*, be reconsidered. The Department is aware of the Commissions reluctance to revisit this issue in light of other users who may be appealing and requesting reconsideration on this same issue. However, it appears the difference between NDOT and others who may request reconsideration on this matter reduces to an issue of permanent authorization for usage of 31 GHz as compared to NDOT's request for an interim or temporary authorization with intent and requirement to relocate or transition to another technology or communications medium in the future. The Commission could justify NDOT's request and make an exception based on the above argument without impacting its original objectives regarding reallocation of the 31 GHz spectrum.

The Department is also aware that requests for intervention on our behalf from congressional delegations, legal firms, and others has occurred. It is the Department's intent to continue to work directly with the Federal Communications Commission in this matter and determine if a solution can be implemented as described above.

I would like to thank you and your staff for the time given to a solution to the current problems facing NDOT on this matter. Should additional information be required during the review and consideration of the issues mentioned above, please contact Richard Sheldrew, Telecommunications Manager at (702) 888-7888. Thank you.

Sincerely,



Roger Grable  
Assistant Director -Administration

RG/hlc

cc: Robert James, Federal Communications Commission  
Elizabeth Lyle, Federal Communications Commission  
Nancy Booker, Federal Communications Commission

## ATTACHMENT A

The following information provides a summary of activities required by NDOT to review, design, fund, and implement an alternative communications medium to replace the current 31 GHz equipment.

TASK	OBJECTIVE	TIME FRAME
Selection of Project Consultant	To coordinate and provide program management of processes required for implementation of a communications alternative to 31 GHz.	In progress
Review of needs requirements	Review of LVACS system and traffic control objectives and system requirements	6/30/97-8/01/97
Request for information	To request and review available technologies to support communications requirements along with information to determine partnership opportunities with either commercial or private communications providers.	8/01/97-9/30/97
Develop and prepare RFP/Specifications	Utilizes information from RFI regarding information on technologies and opportunity for public/private partnership to develop and prepare Request for Proposal (RFP)	9/30/97-11/15/97
RFP advertisement and response	Time Frame required to let and obtain responses to request for proposal.	11/15/97-01/10/98
Selection of Proposed Communications Alternative and Installation program plan	Review, selection and award of RFP	01/10/98-02/10/98
Installation/operational verification		02/10/98-02/10/99
System acceptance		By 03/15/99

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